



PATENT
P56642

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

In re Application of:

Appeal No. _____

JONG-PHIL KIM

Serial No.: 10/050,158

Examiner: D. BONSHOCK.

Filed: 18 January 2002

Art Unit: 2173

For: FILE LIST DISPLAY APPARATUS CAPABLE OF SUCCESSIVELY
DISPLAYING SUB-LIST

Attn: Board of Patent Appeals & Interferences

TRANSMITTAL OF APPELLANT'S BRIEF FEE

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O.Box 1450
Alexandria, VA 22313-1450

Sir:

Accompanying this transmittal is a check drawn to the Commissioner of Patents & Trademarks in the amount of \$500.00 (Check #50233) for the filing an **Appeal Brief** in support of a Notice of Appeal filed on 11 October 2005. Should the check become lost, be deficient in payment, or should other fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

Respectfully submitted,



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ATTENTION: Board of Patent Appeals and Interferences

APPELLANT'S BRIEF (37 CFR §41.37)

This brief is in furtherance of the Notice of Appeal filed in this case on 11 October 2005.

The fees required under §1.17(f) for the filing of the Appellant's Brief are dealt with in the accompanying transmittal letter.

This brief is transmitted in triplicate.

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APPEAL BRIEF

I. STATEMENT OF REAL PARTY IN INTEREST

Pursuant to 37 CFR §41.37(c)(1)(i) the real party in interest is:

SamSung Electronics Co., Ltd.
416 Maetan-dong, Yeongtong-gu,
Suwon-si, Gyeonggi-do,
Republic of Korea

II. RELATED APPEALS AND INTERFERENCES

Pursuant to 37 CFR §41.37(c)(1)(ii), there are no appeals nor interferences known to the Appellant, the Appellant's legal representative, or the Assignee (real party of interest) which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-20 are pending, have been finally rejected, such rejections being appealed herein.

IV. STATUS OF AMENDMENTS FILED AFTER FINAL REJECTION

The Amendment filed 21 July 2005 has been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1. A file list display apparatus, comprising:

an input unit for inputting a display command for displaying a sub-list having a predetermined number of files selected in an entire list of the files recorded in a recording medium;

Paragraph [0020] - Fig. 1 is a block diagram showing the file list display apparatus according to the present invention. The file list display apparatus according to the present invention has a manipulation panel 10 for inputting a display command . . .

a display unit for displaying the sub-list; Paragraph [0020], Fig. 1, a liquid crystal display (LCD) display 60 for displaying the file list

a controller for creating one or more sub-lists from the entire list, each sub-list being different from the other sub-lists, and controlling the display unit to successively display each of the sub-lists through the display unit whenever the display command is input through the input unit.
Paragraph [0020], Fig. 1, a controller 20 for controlling the detection unit 40, the storage unit 30 and the LCD display 60; Paragraph [0022] - The LCD display 60 displays a sub-list consisting of some part of the entire file list recorded in the recording medium 50. In other words, the controller 20 creates the sub-list by grouping the files successively listed in the entire list stored in the storage unit 30 by a determined number, for example, ten. The created sub-list is transmitted to the LCD display 60. The LCD display 60 is manufactured to have a sufficient size for displaying the sub-list having names of the ten files; and Paragraph [0039] - Furthermore, the user can freely determine the number of the files displayed one time of the sub-list. For example, when the user selects the number of the files in the sub-list as six, the controller 20 creates the sub-list having the names of the six files and successively displays the sub-list having the names of six files on the LCD display 60.

Claim 14 is similar to claim 1 with the inclusion of a skip command. Claim 14 is directed to a method of controlling a file list display apparatus having a plurality of files of data recorded on a vast-capacity recording medium, said method comprising:

detecting all the files recorded on said vast-capacity recording medium;

storing a list of said detected files in a storage unit separate from the vast-capacity recording medium;

creating one or more sub-lists of said list stored in said storage unit

displaying one of said sub-lists;

detecting an input of a display command or a skip command: Paragraph [0039]

Furthermore, the user can freely determine the number of the files displayed one time of the sub-list.

For example, when the user selects the number of the files in the sub-list as six, the controller 20 creates the sub-list having the names of the six files and successively displays the sub-list having the names of six files on the LCD display 60.

displaying a next sub-list or a previous sub-list, when said display command is detected;

displaying, when said skip command is detected, said list in a forward or backward sequential one-by-one scrolling manner having no more than a predetermined number of files in said list displayed at any one time.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-19 are patentable under 35 U.S.C. §102(b) over Pond et al. (US 5,886,690).

Whether claim 20 is patentable under 35 U.S.C. §103 over Pond et al. (US 5,886,690) (*hereafter : Pond*) in view of van Zoest et al. (US 6,496,802) (*hereafter : Zoest*).

VII. ARGUMENTS

A. **Claims 1-19 are not anticipated by Pond under 35 U.S.C. §102(b).**

Claims 1 through 19 were rejected under 35 U.S.C. §102(b) as being anticipated by Pond *et al.* (US 5,886,690). Applicant respectfully traverses this rejection because the rejection is untenable. Specifically, the Examining staff has premised this rejection upon a prior art reference which is non-enabling for both the purposes asserted by the Examining staff and for the limitations asserted in the claims of that reference, the Examining staff has inaccurately characterized the teachings of Pond and has not given consideration to “the invention” as is mandated by 35 U.S.C. §102(b). Moreover, Paper No. 20050329 is incomplete under 37 CFR §1.104(a)(b) and (c).

1. **Pond Fails To Provide A Written Description And Fails To Describe How To Make And Use The Structure Asserted By The Examining Staff**

In support of this rejection, Paper No. 20050329 states that Pond '609 teaches:

- (i) “in column 5, lines 22-40, column 6, lines 3-10, in column 7, lines 21-28, and figures 2 and 5, a control unit for inputting commands to display a sub-list having a predetermined number of channels (files) with associated programs (files), from the set of all channels (files), the sub-list created from downloading, to memory storage hardware, a list of available channels (number for files) and associated programs (files) from an appropriate source.”¹

Claims 1 Through 19

¹ Paper No. 20050329, Examiner's comments, Page 3. Emphasis added.

Nowhere does Pond' 690 teach "downloading" of any information, such as the Examiner's "list" "to memory storage hardware." In point of fact, the sole instance of storage occurs, "if the REC button 40 had been activated to implement the one-touch record feature"², and the content resulting from that scenario is the recording of a television program if the program is determined to be a current program³, that is, a television program which is currently being broadcast.

The recording a television program which is currently being broadcast is not what is defined by the foregoing excerpt for Paper No.20050329. Missing from the Examiner's application of Pond is any effort by the Examining staff in Paper No. 20050329 to conform with 37 CFR §1.104(a), (b) and (c) by providing a citation of where Pond provides a written description of:

- (i) a "control unit for ... a list of available channels (number files) and associated programs (files) form an **appropriate source**",
- (ii) a "**sub-list created from downloading, to memory storage hardware**", or
- (iii) a "**sub-list created from downloading**" a "list" to "**memory storage hardware**".

Moreover, Pond is devoid of any teaching or suggestion of how to make or use:

- (iv) a "control unit for ... a list of available channels (number files) and associated programs (files) form an **appropriate source**",
- (v) a "**sub-list created from downloading, to memory storage hardware**", or
- (vi) a "**sub-list created from downloading**" a "list" to "**memory storage hardware**".

² Pond , column 8, lines 16 and 17.

³ Pond , column 8, line 20.

Not only are neither the Examiner's "list" from a "source" nor the Examiner's "list" from "an appropriate source" identified by Pond , but neither any "source" nor any "appropriate source" are identified by Pond , and no "control unit" is taught by Pond that has a cap⁴ability to creating a sub-list from a list that has been downloaded. More particularly, in his "open mode" Pond simply states that the sequence of screens appearing in response to manipulation of his "GUIDE" key is simply:

"Normal Viewing → Program Guide TV → Single Channel Guide → Normal Viewing.⁵

The reason for this mere shift in the video image presented via "conventional television receiver/monitor 22"⁶ is, as explained by Pond , that:

"Receiver/descrambler 372 frequency selection for transponder *tuning* and other parameters are controlled by the main CPU 342. The receiver/descrambler 372 is coupled to the main CPU to enable control thereof."⁷

In other words, manipulation of the keys of "remote control unit 18" does nothing in Pond to alter the video display broadcast by "conventional television receiver/monitor 22" except to change the *tuning* of receiver/descrambler 372.⁸ Missing from this teaching is both a written

⁴ Pond , column 3, line 58.

⁵ Pond , column 8, lines 56 and 57.

⁶ Pone , column 3, line 58.

⁷ Pond , column 11, lines 40-45.

⁸ The variation in the tuning frequency of television receiver/descrambler 16 taught by Pond is a response to remote control unit 18 that is far different from the assertion made by the Examiner, namely that Pond ''690 teaches "in column 5, lines 22-40, column 6, lines 3-10, in column 7,

description and a description of how to make and use the Examiner's "control unit" to "select" and to "create" a "sub-list" from a "list", and how to make and use the Examiner's "control unit" to "create" a "sub-list" from a "list" which has been downloaded "to memory storage hardware." In short, the Examiner's asserted reading of Pond fails to conform to any of the requirements of the first paragraph of 35 U.S.C. §112.

Some recognition should be given to that fact that Pond teaches a visual display of all, or part of a *program screen guide* and its constituent parts such as *channel bar* 54 with "a block of channel names 56,"⁹ and a *grid of program information* 52 on a monitor. Absent from Pond is any effort to comply with the requirements of the first paragraph of 35 U.S.C. §112 to provide a "written description" of that invention in the manner that Pond is now interpreted by the Examiner, and "of the manner and process of making and using it, *in such full, clear, concise, and exact terms* as to enable any person skilled in the art" As a result, all that Pond represents is the video presentation of selectable video signals, and lacks teaching of how to use the circuits of his Figures

lines 21-28, and figures 2 and 5, a control unit for inputting commands to display a sub-list having a predetermined number of channels (files) with associated programs (files), from the set of all channels (files), the sub-list created from downloading, to memory storage hardware, a list of available channels (number for files) and associated programs (files) from an appropriate source", and from the other assertion made by the Examiner that Pond teaches "a controller for *creating* one or more sub-lists from the entire list, each sub-list being different from the other sub-lists, and controlling the display unit to successively display each of the sub-lists through the display unit when ever the display command is input through the input unit, Pond teaches, in column 5, lines 22-40, a *creating* [sic, "a creation"]of the pages of the pages from the list of all channels, with all corresponding programs, and the ability to navigate through the different pages, each comprising a different set of elements."

⁹ Pond , column 4, lines 61.

10 and 11 to make and use the Examiner's "control unit" to "create" a "sub-list" from a "list", and how to make and use the Examiner's "control unit" to "create" a "sub-list" from a "list" which has been downloaded "to memory storage hardware." There is therefore, no teaching, and thus no anticipation, by Pond of how to make and use the circuit taught by Figures 10 and 11 of Pond to practice Applicant's "displaying a sub-list having a predetermined number of files selected in an entire list of files recorded in a recording medium", because while control unit 18 may be used according to Pond to select (*i.e.*, to "tune" conventional television receiver/monitor 22 to) the particular video signal to be displayed on his monitor 22, no teaching is made by Pond of how to make control unit 18 alter the field of the video display of monitor 22 to display anything other than the entirety of whatever list is currently being instantaneously represented by a broadcast signal. Moreover, Pond provides no "downloading" or "storage" of this *program screen guide* 50. The fact that a video display of a list represented by a broadcast signal may be displayed by the monitor in either its entirety or may be presented as a scrolled image in a series of video frames is irrelevant in view of the language of Applicant's pending claims because Pond lacks a written description of how control unit 18, or any other constituent component of Pond may be used to alter any of those video frames.

Moreover, considering claim 1 in its totality, there is, no teaching, and thus no anticipation, by Pond of how to make and use the circuit taught by Figures 10 and 11 of Pond to practice Applicant's "displaying a sub-list having a predetermined number of files selected in an entire list of files recorded in a recording medium"¹⁰ in combination with Applicant's "controller for creating

¹⁰ Claim 1, lines 2 and 3.

one or more *sub-lists* from the *entire list* ... to *successively display* each of the sub-lists ...”,¹¹ due to the same defects in the specification of Pond , namely that although control unit 18 may be used according to Pond to select the particular video signal to be displayed on his monitor 22, there is no teaching made by Pond of how to make control unit 18 alter the field of the video display of monitor 22 to display anything other than the entirely of whatever list is represented by a broadcast signal.

Claim 10

Consideration of Applicant’s claim 10 reveals similar deficiencies, and in particular, any teaching or suggestion of how remote control unit 18 may be used to provide a “*sub-list created from downloading, to memory storage hardware, a list of available channels (number for files), and associated programs, from an appropriate source*” as is asserted by the Examiner.¹² Unexplained by Pond is how more than one broadcast signal may be simultaneously recorded.

The Examiner’s application of Pond lacks any effort by the Examining staff in Paper No. 20050329 to conform with 37 CFR §1.104(a), (b) and (c) by providing a citation of where Pond provides a written description of:

(i) how a “*sub-list*” could possibly be “*created from downloading, to memory storage hardware, a list of available channels (number for files), and associated programs*” as is

¹¹ Claim 1, lines 5-7.

¹² Ignored by the Examiner’s interpretation of Pond is that Pond itself purports to download only one currently broadcast television at a time, and does not purport to record any signals unless those signals are being currently broadcast. See Pond , column 8, beginning with line 16. Neither lists, sub-lists nor “associated programs” are recorded.

asserted by the Examiner;

- (ii) how “*a list of available channels (number for files), and associated programs*” could be downloaded “*from an appropriate source*” as is asserted by the Examiner, when Pond itself teaches recording of a single, currently broadcast program; and
- (iii) precisely where Pond teaches how to create “the sub-list having a predetermined number of channels (files) each with associated programs (files), from the set of all channels (files) and associated programs (files)” as is asserted by the Examiner.¹³

Claim 14

Turning to Applicant’s claim 14, the Examiner asserts that Pond teaches:

“a method of [sic, “for”] controlling a file list display apparatus having a *plurality of files of data* recorded on a vast-capacity recording medium ... [by] detecting all [sic, “of”] the files recorded ... and storing a list of the detected files in a storage unit separate from the vast-capacity recording medium”¹⁴

This is a gross distortion of Pond , which discloses but a single video cassette recorder 20,¹⁵ and nowhere provides a written description, let alone a description of how to make and use “a storage

¹³ Asserted by the Examining staff in Paper No. 200500329, page 6.

¹⁴ Paper No. 20050329, page 7.

¹⁵ This is but another example of the misrepresentation of Pond set forth in Paper No. 20050325. Moreover, Pond expressly disclaims the Examiner’s interpretation, and states that the practice of his system "does not require a video recorder for operation." Column 3, line 59.

unit separate from the vast-capacity recording medium”, or either assembling or “controlling a file list display apparatus having a *plurality of files of data* recorded”; moreover, nowhere does Pond contemplate on a vast-capacity recording medium ... [by] detecting all [*sic*, “of”] the files recorded ... and storing a list of the detected files in a storage unit separate from the vast-capacity recording medium”

Missing from the Examiner’s application of Pond is any effort by the Examining staff in Paper No. 20050329 to conform with 37 CFR §1.104(a), (b) and (c) by providing a citation of where Pond provides a written description of:

- (i) a “control unit” for “controlling a file list display apparatus having a *plurality of files of data* recorded”,
- (ii) a “control unit” for “detecting all [*sic*, “of”] the files recorded”, and
- (iii) a “control unit” and a second “storage unit” for “storing a list of the detected files in a storage unit separate from the vast-capacity recording medium”.

In summary, and ignoring *arguendo* that Pond is deficient in its compliance with the several requirements of the first paragraph of 35 U.S.C. §112, Pond is devoid of both a written description and any description “of the manner and process of making and using it, *in such full, clear, concise, and exact terms* as to enable any person skilled in the art ... ” with respect to the claimed invention.

Consequently, Pond fails to anticipate the pending claims 1 through 19, and this rejection should not be sustained.

2. **The representation of Pond set forth in Paper No. 20050329 is inconsistent with the express teachings of Pond.**

In support of the rejection, the Examiner asserts that Pond teaches:

- (i) “in column 5, lines 22-40, column 6, lines 3-10, in column 7, lines 21-28, and figures 2 and 5, a control unit for inputting commands to display a sub-list having a predetermined number of channels (files) with associated programs (files), from the set of all channels (files), the sub-list created from downloading, to memory storage hardware, a list of available channels (number for files) and associated programs (files) from an appropriate source.”¹⁶

What Paper No. 20050329 asserts is that each numerical symbol or icon representing a “channel” constitutes a distinct “file” as that noun is used in Applicant’s claim 1. Contrary to the Examiner’s assertion however, is the fact that Pond itself expressly teaches that all images formed on monitor 22 are raster scans which have long been known in both the art and in the United States Patent & Trademark as “fields”, such as those provided by satellite system band, video cassette recorder helical scans of a cassette tape, or atmospheric television broadcast signals, all of which are time varying fields of raster scans. The art of broadcasting television schedules is better shown by U.S. Patent No. 5,479,268 to Patrick Young et al. Even the logo 60 of the current channel displayed at the top of channel bar is a result of a raster scan, rather than an image retrieved from a “file.”

If the Examiner’s assertion that each broadcast channel constitutes a “file”, then what is the art recognized difference between a “field” and a “frame” in a broadcast television signal? The Examiner’s attention is invited to consider the definition of “file” set forth in the Microsoft *Computer Dictionary*, (5th Ed. 2002), namely:

¹⁶

Paper No. 20050329, Examiner’s comments, Page 3.

“[a] complete, named collection of information, such as a program, a set of data used by a program, or a user created document. A file is the basic unit of storage that *enables a computer to distinguish one set of information from another*. A file is the “glue” that binds a conglomeration of instructions, numbers, words, or images into a coherent unit that a user can retrieve, change, delete, save, or send to an output device.”

Nowhere does Pond explain how he enables his system to store currently broadcast television programs and then enable his control unit “storage that *enables a computer to distinguish one set of information from another*.” In summary, the currently broadcast signals stored by Pond lack all of these attributes, aspects, characteristics and features of a file, and concomitantly the control unit of Pond is devoid of both a written description and a teaching of how to make or use his control unit to “change, delete, save, or send to an output device” those currently broadcast television programs which have been recorded.

This is a glaring deficiency in the Examiner’s interpretation of Pond .

In contradistinction to the Examiner’s inaccurate characterization of Pond , Applicant defines “input unit” that initiates display of a sub-list, with the sub-list “having a predetermined number of files **selected** in an entire list of the files” As explained by Pond , in one aspect of the “page” mode,

“the up and down arrows will display only a **selected** subset of the available channels (i.e., ten (10) channels at that time) and the *program screen guide* includes a page bar for identifying the presence of any selectable program channels that are not present on the currently displayed channel bar.”¹⁷

¹⁷ Pond , column 5, lines 27, 31.

This excerpt from Pond is a statement about the limitations of the visual display, and is not a statement about the *program screen guide* and its constituent parts such as *channel bar* 54, common to both the “open mode” and the “closed mode” of his operation. Moreover, these “available channels” constitute “a block of channel names 56,¹⁸ devoid of content or other information. What the Examiner has endeavored to identify as “files” is simply “a block of channel names 56 ... with the current channel 58 ... being highlighted [and t]he logo 60 of the current channel [being] displayed at the top of the channel bar 54 and the number 62 of the current or selected channel [being] displayed at the bottom.”¹⁹ This “information” is simply “the channel bar 54” component of a single video visual display supplementing a “program information grid 52 [that] can include information relating to the program title, day, time of day, starts-stop time of the program, rating of the program, data services available and parental lock setting.”²⁰ As explained by Pond , the “open mode” program guide displays the entire “on-screen programming guide” comprised of the “grid of program information illustrated by dashed box 52 and a program bar or channel bar illustrated by dashed box 54”, while in the “closed mode” only “channel bar 54 is displayed”, as illustrated in the figure 3 and 4 respectively. In short, what the Examining staff has endeavored to identify as a “file” is nothing more than a time variant broadcast signal which represents a single *program screen guide* with its constituent parts such as *channel bar* 54 and *grid of program information* 52.²¹ Moreover, the

¹⁸ Pond ' 690, column 4, lines 61.

¹⁹ Pond , column 4, lines 60-66.

²⁰ Pond , column 4, lines 56-60.

²¹ Pond , column 4, lines 61.

channel bar 54 is constant, is arranged in sequential order that is not alterable by remote control unit 18, regardless of whether the monitor is placed in its *direct channel entry mode*²² or in its *page mode*.²³ Consequently, the entire “on-screen programming guide” taught by Ponds is devoid of any “sub-list”; the mere fact that monitor 22 of Pond is incapable of displaying the entire “on-screen programming guide” within a single frame, but instead must “scroll through”²⁴ a sequentially array of numerically ordered channels does not convert the entire “on-screen programming guide” into “sub-files.” Even ignoring *arguendo* that the “on-screen programming guide” of Ponds lacks any of the characteristics, attributes and alterability of a “file”, the “on-screen programming guide” of Ponds is disclosed as a single unalterable field written in the singular number, rather than in the plural number of Applicant’s “entire list of files” Absent teaching of this, Pond fails to present a *prima facie* showing of anticipation under 35 U.S.C. §102(b), and this rejection should not be sustained.

3. **The express teachings of Pond contradict the interpretation by the Examining staff set forth in Paper No. 20050329, and fail to make a *prima facie* showing of anticipation “the invention” defined by pending Claims 1-19**

The statement in Paper No. 20050329 that,

- (i) “in column 5, lines 22-40, column 6, lines 3-10, in column 7, lines 21-28, and figures 2 and 5, a control unit for inputting commands to display a sub-list having a predetermined number of channels (files) with associated programs

²² Pond , column 4, lines 61.

²³ Pond , column 5, line 56.

²⁴ Pond , column 5, line 9.

(files), from the set of all channels (files), the sub-list *created* from downloading, to memory storage hardware ...”²⁵

is untenable and unsupported by the record of this application.

During these two distinctive “open” and “closed” modes of Pond , *remote control unit* 18 enables the user to “scroll through the available channels”,²⁶ but nowhere does Pond teach that remote control unit 18 is enabled to input Applicant’s “display command for displaying a sub-list having a predetermined number of files *selected* in an entire list”; to the contrary, in both its “open mode” and its “closed mode”, as well as in its “direct channel mode” and in its “page mode”, *remote control unit* 18 of Pond simply scrolls through a single “on-screen programming guide”. In point of fact, *remote control unit* 18 lacks any key which enables a user to anything other than view whatever video signal is currently being broadcast, regardless of whether that video signal represents the “on-screen programming guide” or a television program. Simply put, “remote control unit 18” of Pond merely changes the tuning of monitor 22, and enables the user to scroll through the video image appearing on the screen of monitor 22; unlike the practice available under Applicant’s claims, with Pond a user is not able to “select” any “file” from the past, such as a file which the viewer had viewed thirty-five minutes previously, because the files are time varying broadcast signals. Without this feature, Pond makes no anticipation of Applicant’s claims and this rejection may not be maintained.

Pond is singularly devoid of a selection of files from “an entire list of the files recorded in

²⁵ Paper No. 20050329, Examiner’s comments, Page 3.

²⁶ Pond , Column 6, line 19.

recording medium” simply because Pond lacks teaching or suggestion of any recording medium. What Pond teaches however, is a serial illustration of “on-screen programing guide”²⁷ taken from an on-air broadcast signal by tuning the resonant frequency of television receiver/descrambler 16 to receive the corresponding to video images displayed either the open or closed modes, and relies upon remote control unit 18 to “scroll through” the entirety of those images, absent any selection of “files” or creation of any “sub-list(s)” from those “files.” The inconsistency of the Examiner’s interpretation of Pond is better illustrated by the Examiner’s subsequent assertion that Pond teaches:

- (ii) “a controller for creating one or more sub-lists from the entire list, each sub-list being different from the other sub-lists, and controlling the display unit to successively display each of the sub-lists through the display unit whenever the display command is input through the input unit, Pond teaches, in column 5, lines 22-40, a creating of the pages of the pages from the list of all channels, with all corresponding programs, and the ability to navigate through the different pages, each comprising a different set of elements.”²⁸

The fallacy in this excerpt from Paper No. 20050329 is that nowhere does Pond disclose a “controller” distinct from the “input unit”, and nowhere does Pond suggest Applicant’s “controller” that enables a user “to navigate through the different pages” as disingenuously asserted by Paper No. 20050329.

4. As interpreted by Paper No. 20050329, Pond fails to anticipate “the invention” defined by pending Claims 1-19

35 U.S.C. §102(b) mandates consideration of “the invention” defined by the pending claims.

²⁷ Pond , Column 4, line 40.

²⁸ Paper No. 20050329.

Here, Paper No. 20050329 merely paraphrases, and thus impermissibly distorts that express language of claims 1 through 19. Moreover, Pond et al. (*hereafter* : Pond) fails to anticipate the claims.

Note that in order for an anticipation rejection to be proper, the anticipating reference must disclose exactly what is claimed. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Note here that the Examiner has not relied on "inherency," accordingly, each and every element must be expressly described in Pond.

Claim 1

An essential characteristic of the invention set forth in claim 1 is the generation of a sub-list comprising a predetermined number of files selected from an entire list of files recorded in a recording medium. Pond fails to anticipate the invention in this regard.

Claim 1 calls for, in part, *an input unit for inputting a display command for displaying a sub-list having a predetermined number of files selected in an entire list of the files recorded in a recording medium; and*

a controller for creating one or more sub-lists from the entire list, each sub-list being different from the other sub-lists, and controlling the display unit to successively display each of the sub-lists through the display unit whenever the display command is input through the input unit.

Here, the Examiner refers to Pond's col. 5, lines 22-40, Fig. 2 and Fig. 5. Note also that the

Examiner erroneously equates Pond's "channels" with the claimed *files*.

Col. 5, lines 22-40 state: "Under another selected embodiment of the present invention, remote control unit 18 includes PAGE key 40 can be used to display a screen that allows the user to "page" forward, backward, up and down through various screens in a "page" mode. According to one aspect of the "page" mode, the up and down arrow keys will display only a selected subset of the available channels (i.e., ten (10) channels at a time) and the program screen guide includes a page bar for identifying the presence of any selectable program channels that are not present on the currently displayed channel bar. According to a separate aspect of the "page" mode when it is used while in the "Open Mode," the left and right arrow keys advance by a predetermined time interval (i.e., one day intervals) the portion of the available program schedule information that is displayed and the program screen guide includes a page bar for identifying the presence of any time-dependent program information for the program channels that is not presently shown on the program screen guide."

A review of the foregoing finds no mention of *an entire list of the files recorded in a recording medium*, and the Examiner has failed to identify where *a recording medium* is disclosed in Pond for recording Pond's "channels."

Note that Examiner continues to erroneously hold that the "channels" in Pond correspond to the *files* presently claimed.

The Examiner continues to define a *file* as "a unit of storage that distinguishes one set of information from another" or "a named collection of information" Then the Examiner holds that a *channel* does exactly that, that is, "it is a named item (CNN, TBS, etc.) that **represents** a collection

of information . . ." and refers us to Pond's col. 7, lines 59-67 (none of which define a channel as representing a collection of information). We note that the Examiner fails to show where, in the art, a *channel* is defined as a collection of information. In the art or television, a channel is a communication path defined by a predetermined frequency, and terms such as CNN and TBS are names representing a broadcast company, not a "collection of information".

Looking further into the rejection, we find that the Examiner, on page 6, paragraph 16, of Paper No. 20050329 (final Office Action), with respect to claim 14, refers to Pond's ROM as the means for storing the *entire list* and further refers to Pond's RAM. We will address claim 14 later. As for now, we look back to claim 1 and read into the rejection reference to Pond's ROM or RAM as the claimed *recording medium*. The Examiner has made no mention of any other recording medium.

Looking to Pond's disclosure, we find, with respect to Fig. 10, the disclosed ROM and RAM. Pond discloses "The main CPU 342 controls the overall operation of the IRD 16 by executing object code software stored in the read only memory (ROM) 351 and by both writing and reading data to and from the random access memory (RAM) 348." See col. 11, lines 17-20.

Accordingly, ROM 351 stores only "object code software;" and being a read only memory can not store the "channel" information disclosed in Pond. That leaves us with RAM 348 to consider. Looking further to Pond's disclosure, we find no other mention of RAM 348 nor to what type of "data" that is stored therein.

Deficiencies in the factual basis cannot be supplied by resorting to speculation or unsupported

generalities. *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967) and *In re Freed*, 425 F.2d 785, 165 USPQ 570 (CCPA 1970).

Where claim 1 calls for *an input unit for inputting a display command for displaying a sub-list having a predetermined number of files selected in an entire list of the files recorded in a recording medium*, the Examiner refers to Pond's discussion of downloaded information regarding the availability of channels (col. 6, lines 3-6) and Pond's later discussion of "any required memory storage hardware" (col. 7, lines 21-29). There is no disclosure in Pond that the "downloaded information" is a *list of files* (or a list of "named collections of information") There is only disclosure that the "downloaded information" represents channel numbers, such numbers representing predetermined tuning frequencies. Accordingly, there may be a list of channel numbers disclosed in Pond, but there is no disclosure that channel numbers are *files recorded in a recording medium*.

Accordingly, the rejection of claim 1 is in error, because Pond fails to disclose, and thus anticipate, at least the claimed *entire list of the files recorded in a recording medium*. Thus the rejection should not be sustained.

Looking again to the written rejection of claim 1, the Examiner states that Pond "teaches", instead of Pond discloses. A §102 rejection must be based on disclosure.

"There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." *Scripps clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001, 18 USPQ2d 1896 (Fed. Cir. 1991).

The Examiner further states that Pond teaches a "sub-list created from downloading, to memory storage hardware, a list of available channels . . . and associated programs . . . from an appropriate source." We note that the Examiner's arguments (page 10 paragraph 30) in response to the Applicant's traversal are not too different from the language used in the written rejection.

It has been respectfully requested that the Examiner identify where this **memory storage hardware is disclosed** in Pond. The Examiner has been further requested to identify where Pond discloses **an appropriate source**.

On page 10, paragraph 30, of Paper No. 20050329 (final Office Action), the Examiner goes on to state "Pond teaches the entire list stored [at] a remote location and portions of the entire list being downloaded, as needed, to memory at the users receiver." The Examiner uses nearly identical language in paragraph 32.

It is well known in the art, see U.S. Patent No. 5,479,268 to Patrick Young et al. incorporated by reference in Pond, that a broadcast source provides schedule information on the vertical blanking interval (VBI) of a broadcast video signal. A detector/decoder separates this information and processes it for display in response to a request by a user (viewer), otherwise it remains on the VBI and is ignored by the television system.

The schedule information is a single file, not a plurality of files, containing data pertaining to every channel available from the broadcast source (such as a local television company like Comcast or Cox). That is, the information is **not** broken down into a plurality of files with each file being sent on a separate VBI.

The schedule information is decoded and displayed in response to the user request (e.g., displayed in the formats disclosed by Pond).

Young et al. discloses:

In the system 180, programmable tuner 202, which may be part of a cable decoder unit, receives a TV signal from antenna 200 and/or from cable input 205. Tuner output 216 goes to a vertical blanking interval (VBI) decoder 222, which may be a closed caption decoder or a high speed teletext decoder. **Listing** information and other support information, such as cable channel assignment data, will be transmitted over the VBI by one or more local stations or cable channels several times a day or continuously.

When update is required, programmable tuner 202 will be tuned automatically to the station or cable channel carrying the data. After the VBI signal is processed by CPU 228, the **listing** data is stored in schedule memory 232.

For a What's on TV request, the **listing** stored in schedule memory 232 is retrieved, processed by CPU 228, and outputted to video display generator 224. Video switcher 226 is enabled by CPU output 246 to select the video display generator 224 output whenever schedule data is to be presented to the TV/monitor 210.

The listing is **not** a plurality of files, but is instead a single file, similar to the file saved used to generate the Examiner's rejection. Consider the rejection. The file data, once recalled by the Examiner, is decoded by a word processor and displayed on a screen. If the information is formatted in such a way as being unable to display the entire file on a screen, the information is separated into display pages. Accordingly, the screen display may show, for example, part of a page, a whole page or two whole pages. These pages are **not** separate files, and are not a sub-list of plural files.

Likewise, in Pond, the channel information is part of a single file located on the VBI of a video signal, decoded and stored in a schedule memory. If the information is formatted in such a way

as being unable to display the entire schedule on a screen, the schedule is separated in display pages.

Pond discloses:

As shown in FIGS. 5 and 6, the "Page Mode" can be used when the program guide screen 50 is in "Open Mode," and can also be used when the program guide screen 51 is in "Closed Mode." According to one embodiment of the present invention, when the program guide is in "Page Mode," the program guide screen 70 includes a page bar 72 as shown in FIG. 5. According to a separate embodiment of the present invention in which the guide screen is in "Open Mode," the program guide screen 70 includes a page bar 71 for indicating the presence of any program channel information (such as time-dependent program information) that is not shown on the currently displayed program screen guide. As will be appreciated by those skilled in the art, the page bars 71, 72 visually convey to the user information about the position of the currently displayed page relative to the total pages available for viewing. For example, a vertical bar along the side of the program guide screen may include a segment that is highlighted or otherwise visually distinct from the remainder of the bar, and the position of this highlighted portion relative to the remainder of the bar indicates how many additional pages of channel information are available for viewing. Alternatively, the page bar 72 may provide an alphanumeric indication of which page is being viewed (i.e., "page 1 of 6" or "1/6"). As shown in connection with FIG. 6, a page bar 72 can also be used in connection with the "Closed Mode" operation to provide a visual or alphanumeric indication next to the channel bar 54.

There is no disclosure supporting any holding that these pages are separate files, nor is there any disclosure supporting any holding that each channel is stored in memory as separate or individual files.

The Examiner repeatedly refers to Pond's col. 5, lines 22-40; col. 6, lines 3-10, col. 7, lines 21-28 and Figs. 2 and 5.

Col. 5, lines 22-40 refer to the paging operation controlled by a remote control.

Col. 6, lines 3-10 refer to the determination of available channels from a broadcast source.

Such determination is well known in the art. When a user purchases a new television and connects it to a tv cable input from a broadcast source (such a Comcast or Cox), there is a menu option to automatically detect available channels in order to set up the receiver's tuner. If the tuner can receive 124 channels, but there are only 99 channels available that contain video information, the automatic setup blocks the use of channels that do not carry video. Accordingly, if channels 100-124 are blocked then when a user of a remote scrolling through the channels reaches 99, the next channel to be displayed in response to a channel up command will start again at 1, skipping channels 100-124.

Col. 7, lines 21-28 discuss "any required memory hardware" and where such hardware may be located.

None of the sections of Pond referred to by the Examiner, *displaying a sub-list having a predetermined number of files selected in an entire list of the files recorded in a recording medium; nor creating one or more sub-lists from the entire list, each sub-list being different from the other sub-lists, and controlling the display unit to successively display each of the sub-lists through the display unit whenever the display command is input through the input unit.*

Further, there is no disclosure in Pond of *creating one or more sub-lists from the entire list*. That is, the *list*, as discussed above, is a list of available channel numbers (2, 3, 4, etc.) and these channel numbers are displayed in Pond's Fig. 7. As shown in Fig. 7, the entire list is not displayed, but just because the entire list is not displayed, this does not mean that sub-lists are created, it simply means that the entire list cannot be seen, only portions of the entire list can be seen.

Accordingly, the rejection of claim 1 is deemed to be in error and should not be sustained.

Claim 10

With respect to claim 10, it is required that Pond disclose a step of *reading an entire list of files recorded in a recording medium*. We find no factual reference to such a step being disclosed in Pond in the rejection. The Examiner repeats the Applicant's claim language, identifies a portion of Pond's disclosure, *i.e.*, col. 5, lines 22-40, but fails to show where the above step is found in that portion of Pond's disclosure. Instead, the Examiner refers to a "control unit for inputting commands to display a sub-list, from the list of available channels." There is no indication that this "list of available channels" is entirely read, nor that this list is recorded in a recording medium.

Accordingly, the rejection of claim 10 is in error and should not be sustained.

Claim 14

With respect to claim 14, it is required that Pond disclose *detecting all the files recorded on said vast-capacity recording medium*.

The Examiner equated Pond's ROM 351 with the claimed *vast-capacity recording medium*. We can find no disclosure in Pond that ROM 351 stores Pond's entire list of available channels, and the Examiner has not pointed to any location in Pond supporting the rejection. Note, *Ex parte Levy*, 17 USPQ2d 1461, 1462 (1990) states:

"it is incumbent upon the examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference."

We can only find that object code software is stored in the read only memory (ROM) 351.

Claim 14 also calls for *storing a list of said detected files in a storage unit separate from the vast-capacity recording medium*. Here, it appears that the Examiner is equating Pond's RAM 348 with the claimed *storage unit*. However, we can find no disclosure in Pond indicating that a list of files detected in ROM 351 is stored in RAM 348.

In Pond's only reference to RAM 348, Pond discloses "The main CPU 342 controls the overall operation of the IRD 16 by executing object code software stored in the read only memory (ROM) 351 and by both writing and reading data to and from the random access memory (RAM) 348." See col. 11, lines 17-20. There is no disclosure as to what the term "data" represents. Deficiencies in the factual basis cannot be supplied by resorting to speculation or unsupported generalities.

Accordingly, the rejection of claim 14 is deemed to be in error and should not be sustained.

Having shown that claims 1, 10 and 14 are not anticipated by Pond, it is thus deemed that the rejection of claims 2-9, 11-13 and 15-19 is also deemed to be in error and should not be sustained.

B. Claim 20 is not obvious under 35 U.S.C. §103(a) in view of the combined teachings of Pond and Zoest.

Claim 20 requires that *said files contain music data and are grouped according to a one of a song title, an album a song came from, an artist who did the song or a song's genre*.

The Examiner erroneously states that Pond teaches "the files consist of entertainment data," and refers us to Pond's col. 4, lines 5-8. Looking to the cited section of Pond we find disclosed therein:

VCR, AUX and TV in the control block illustrated by reference numeral 30. These various modes of operation allow a single remote control unit to operate a multiplicity of entertainment equipment. In each of the modes . . .

We find no mention of the word "files," nor the term "entertainment data" in the cited section of Pond. A search of Pond's disclosure finds no mention of the word "files," nor the term "entertainment data." It is the job of all PTO examiner's to present factual evidence, not make up terms to suit his or her need to make a rejection.

On page 11, paragraphs 33 and 34, of Paper No. 20050329 (final Office Action), the Examiner states that "the terms 'file' or 'entertainment data' are logical equivalents for **ideas taught** by the Pond reference." (emphasis added).

Maybe that is what the Examiner gets from Pond, but one of ordinary skill in the art would not equate files to channels, and would not equate channel information to entertainment data.

Additionally, Pond is directed to television and in particular an on-screen guide of television channels. One of ordinary skill in the art would have no motivation to look to Zoest's teachings of *music data* for modifying Pond or even combining the teachings of Pond and Zoest.

The Examiner fails to point out why one of ordinary skill in the art would look to a teaching concerning *music data* in order to modify Pond. Instead, the Examiner refers to Zoest's teaching of separating a list into sub-lists if it comprises more than 250 elements. The Examiner has not identified where Pond discloses a list having more than 250 elements, such that one of ordinary skill in the art, if familiar with Zoest, would look to the teachings of Zoest to modify Pond. And it is not clear how one of ordinary skill in the art of television broadcasting would be familiar with Zoest.

Accordingly, the rejection of claim 20 is deemed to be in error and should not be sustained.

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VIII. APPENDIX

CLAIMS UNDER APPEAL

1 1. A file list display apparatus, comprising:

2 an input unit for inputting a display command for displaying a sub-list having a

3 predetermined number of files selected in an entire list of the files recorded in a recording medium;

4 a display unit for displaying the sub-list; and

5 a controller for creating one or more sub-lists from the entire list, each sub-list being different

6 from the other sub-lists, and controlling the display unit to successively display each of the sub-lists

7 through the display unit whenever the display command is input through the input unit.

1 2. The file list display apparatus according to claim 1, wherein each of the sub-lists is created

2 by grouping the files successively listed in the entire list by the predetermined number of the files.

1 3. The file list display apparatus according to claim 2, wherein the display command

2 includes:

3 a forward display command for successively displaying the sub-lists according to a forward

4 list order of the files; and

5 a backward display command for successively displaying the sub-lists according to a

6 backward list order of the files.

1 4. The file list display apparatus according to claim 3, wherein the input unit is a

2 manipulation panel having a plurality of manipulation buttons for inputting the display command.

1 5. The file list display apparatus according to claim 4, wherein the display command is input
2 by a combination of no more than two of the manipulation buttons.

1 6. The file list display apparatus according to claim 5, wherein
2 the manipulation buttons include a forward skip button, a backward skip button and a mode
3 set-up button, and
4 the forward display command is input by a combination of the forward skip button and the
5 mode set-up button, and the backward display command is input by a combination of the backward
6 skip button and the mode set-up button.

1 7. The file list display apparatus according to claim 6, wherein
2 the forward skip button is a button for inputting an update command for updating one of the
3 files in the sub-list according to the forward list order, and
4 the backward skip button is a button for inputting an update command for updating one of
5 the files in the sub-list according to the backward list order.

1 8. The file list display apparatus according to claim 7, further comprising a cursor button for
2 selecting at least one of the files in the sub-list,
3 wherein the updating of the files by the forward skip button and the backward skip button is
4 performed in regard to the file selected by the cursor button by changing the selected file with one

5 of the files of a sequentially previous sub-list or a sequentially subsequent sub-list, respectively.

1 9. The file list display apparatus according to claim 1, further comprising:

2 a detection unit for detecting the entire list from the recording medium; and

3 a storage unit for storing the entire list detected by the detection unit, wherein the controller

4 creates the sub-list from the entire list stored in the storage unit.

1 10. A file list display method, comprising the steps of:

2 reading an entire list of files recorded in a recording medium;

3 creating one or more sub-lists having a predetermined number of files selected in the entire

4 list, each sub-list being different from the other sub-lists, whenever a display command is input; and

5 successively displaying each of the sub-lists created in the creating step whenever the display

6 command is input.

1 11. The file list display method according to claim 10, wherein each of the sub-lists is created

2 by grouping the files successively listed in the entire list by the predetermined number.

1 12. The file list display method according to claim 11, wherein the display command

2 includes:

3 a forward display command for successively displaying the sub-lists according to a list order

4 of the files; and

5 a backward display command for successively displaying the sub-lists according to a

6 backward list order of the files.

1 13. The file list display method according to claim 10, further comprising a step of storing
2 the entire list after the reading step,
3 wherein, in the creating step, the sub-lists are created from the stored entire list.

1 14. A method of controlling a file list display apparatus having a plurality of files of data
2 recorded on a vast-capacity recording medium, said method comprising:

3 detecting all the files recorded on said vast-capacity recording medium;
4 storing a list of said detected files in a storage unit separate from the vast-capacity recording
5 medium;
6 creating one or more sub-lists of said list stored in said storage unit
7 displaying one of said sub-lists;
8 detecting an input of a display command or a skip command;
9 displaying a next sub-list or a previous sub-list, when said display command is detected;
10 displaying, when said skip command is detected, said list in a forward or backward sequential
11 one-by-one scrolling manner having no more than a predetermined number of files in said list
12 displayed at any one time.

1 15. The method as set forth in claim 14, said skip command being detected by determining
2 whether a rewind button or a fast forward button has been activated.

1 16. The method as set forth in claim 14, said display command being detected by detecting
2 activation of a mode button in combination with activation of a rewind button or a fast forward
3 button.

1 17. The method as set forth in claim 14, said display command being detected by detecting
2 activation of either of a rewind button and a fast forward button when a mode button is in an on state,
3 and said skip command being detected by detecting activation of either of said rewind button and
4 said fast forward button when said mode button is in an off state.

1 18. The method as set forth in claim 14, each said sub-list comprising a different group of
2 said files, each said group comprising said predetermined number of files.

1 19. The method as set forth in claim 14, wherein said files are grouped sequentially to form
2 said sub-lists.

1 20. The method as set forth in claim 18, wherein said files contain music data and are
2 grouped according to one of a song title, an album a song came from, an artist who did the song
3 or a song's genre.

IX. EVIDENCE APPENDIX

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2. U.S. Patent No. 6,496,802 to van Zoest *et al.*, issued on December 17, 2002³⁰.
3. U.S. Patent No. 6,072,508 to Devic, issued on June 6, 2000³¹.
4. U.S. Patent No. 5,886,690 to Pond *et al.*, issued on March 23, 1999³².
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6. U.S. Patent No. 5,585,865 to Amano *et al.*, issued on December 17, 1996³⁴.

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³² Paper No. 20040818 mailed 25 August 2004

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³⁵ Information Disclosure Statements filed on 30 June 2004 and 4 January 2005

³⁶ Information Disclosure Statement filed on 12 May 2004

³⁷ Information Disclosure Statement filed on 30 June 2004

³⁸ Information Disclosure Statement filed on 30 June 2004

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15. A printout from the internet on e.Digital Corporation's "Treo 10" (<http://store.yahoo.com/edig/tre010.html>), dated 11 December 2001⁴³.
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X. RELATED PROCEEDINGS APPENDIX

None.

⁴² Information Disclosure Statement filed on 18 January 2002

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⁴⁵ Information Disclosure Statement filed on 4 January 2005